IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-548

UNITED STATES OF AMERICA, *Appellant*

v.

STATE TAX COMMISSION OF THE STATE OF MISSISSIPPI, ET AL.

On Appeal from the United States District Court for the Southern District of Mississippi

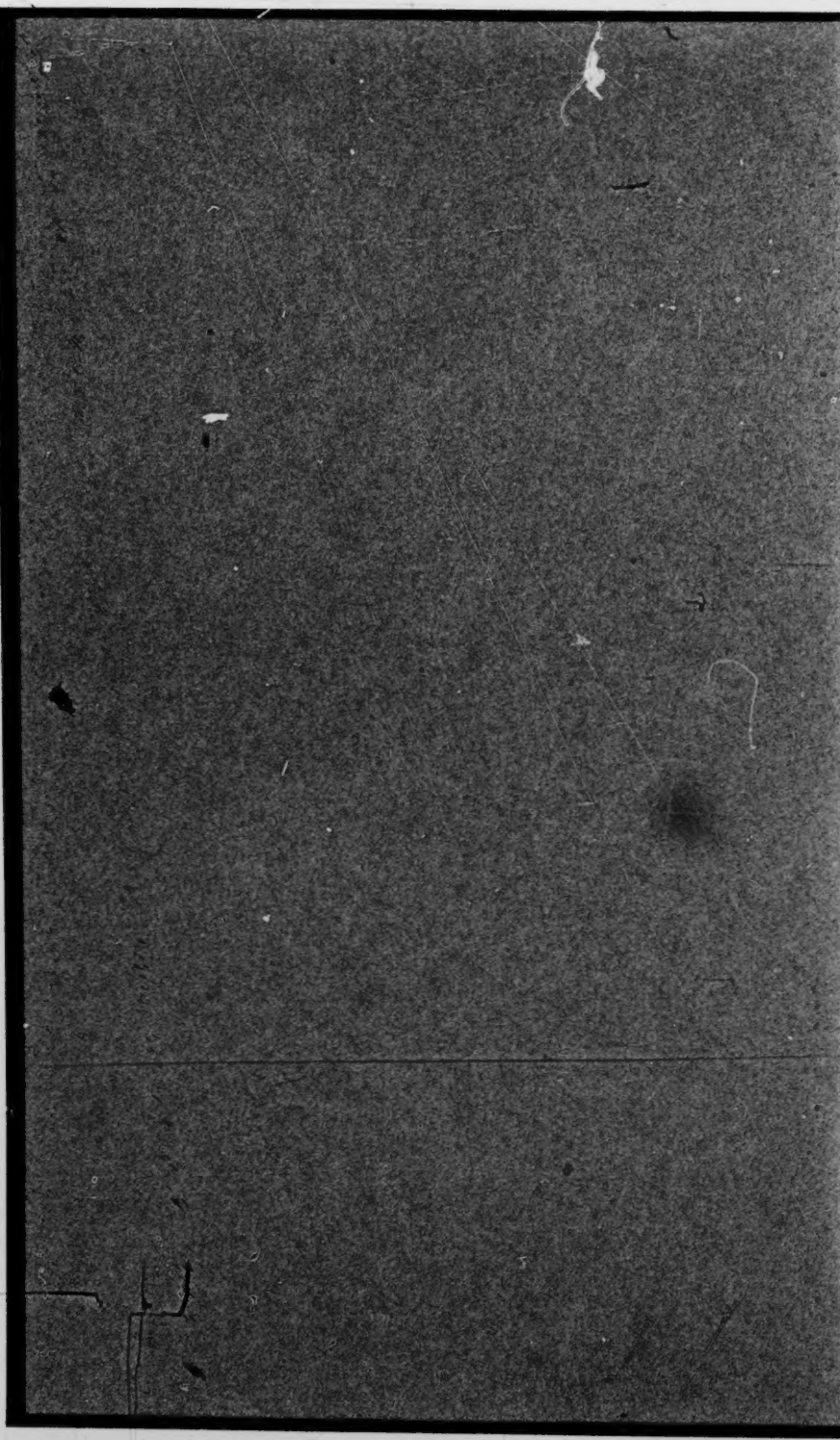
MOTION TO DISMISS OR AFFIRM

A. F. SUMMER
Attorney General
State of Mississippi

GUY N. ROGERS
Assistant Attorney General
State of Mississippi

ROBERT L. WEINBERG
Washington, D. C.
Special Counsel to the
State Tax Commission

Press of Robert H. Adams Printing, Inc., Washington, D. C.



INDEX

CITATIONS

CASES:

Page

STATUTES:

SENATE REPORT:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-548

UNITED STATES OF AMERICA, *Appellant*

v.

STATE TAX COMMISSION OF THE STATE OF MISSISSIPPI, ET AL.

On Appeal from the United States District Court for the Southern District of Mississippi

---

MOTION TO DISMISS OR AFFIRM

The appellees hereby move the Court to dismiss this appeal or affirm the judgment below upon the following grounds:

1. The questions argued in the Jurisdictional Statement are not presented by the decision below.

2. The Court below correctly decided the questions presented to it.

I. THE QUESTIONS ARGUED IN THE JURISDICTIONAL STATEMENT ARE NOT PRESENTED BY THE DECISION BELOW.

The Statement misstates the questions presented. The tax in question was levied upon distillers for the privilege of selling liquor in Mississippi at wholesale.

The wholesaler's mark-up established by this regulation was construed by the Court below as a privilege tax imposed upon distillers when they opted to sell the military outlets directly instead of through the state (4a,[1] footnote 4). Since the Mississippi statute reserves wholesale liquor revenues exclusively for the state (2a), the regulation could only permit the distillers to sell direct to the military retailers upon condition that they remit the specified wholesaler's mark-up to the state. One sanction against refusing to so protect the state's revenue is exclusion from the privilege of doing business in Mississippi.

The first two stated questions (2-3) thus rest on two erroneous premises, i.e., that the Court below found the taxed distillers to be "out-of-state" in a business or legal sense and that it held the mark-up was a state tax "on instrumentalities of the United States." The military retailers were found to be such instrumentalities but the Court also found that they were not taxed.

The third question stated (3) rests on an equally erroneous premise that the Court below had found a conflict between Mississippi's liquor control policy and federal procurement policy. The opinion notes that Mississippi's exercise of its exclusive right to control the wholesaling of liquor within its borders, merely requires the application of a uniform and reasonable percentage mark-up upon prices individually and competitively set by the distillers (33a-34a). The Statement now complains that the regulation violates fed-

[1] The numbers cited herein followed by the letter a are page references to the Appendix to the Jurisdictional Statement. The other page references are to the Jurisdictional Statement itself.

eral procurement policy by preventing competition between Mississippi and out-of-state wholesalers for the business of military retailers in Mississippi (16-17), a wholly new contention.

The Tax Commission of course insisted that any exception to retailer purchases from the state must be confined to distillers, against whom the state could enforce collection of its wholesaler's mark-up by license revocation (54a-55a, 64a). Competition between out-of-state wholesalers and the state of Mississippi for the business of any Mississippi retailer was automatically precluded by its statute, which gives the state a wholesaling monopoly. This contention that Mississippi must permit competition between itself and other wholesalers is a belated claim that a state cannot lawfully pre-empt the wholesaling of liquor to retailers within its borders for itself. That contention was not litigated below, is therefore not before this court, and in any event, has no merit. *Vance* v. *Vandercook*, 170 U.S. 438 (1898).

II. THE COURT BELOW CORRECTLY DECIDED THE QUESTIONS PRESENTED TO IT.

A. There was no conflict between Mississippi policy and federal policy.

Every state in the Union relies upon revenue from liquor sales to support governmental functions. The eighteen so-called monopoly or control states permit no private wholesaling of liquor and reserve revenues from that business exclusively for themselves. Others, so-called license states, license and tax the business of wholesaling liquor to retail outlets within their respective borders. To protect their tax revenues, the "license states" customarily require that wholesaling be confined to the wholesalers they license to do busi-

ness there. Thus, the licensed local wholesalers have a monopoly of sales to retailers within the state. Competition between the licensed wholesalers and out-of-state wholesalers, is legally impossible.

One of the tax consequences of a "license state's" system of controlling wholesale liquor sales was brought to this Court's attention in *Heublein, Inc.* v. *South Carolina Tax Commission,* 409 U.S. 275 (1972). South Carolina taxes both wholesale sales of liquor[2] and the net income derived by distillers upon their sales to the state's wholesalers. Heublein contended that this state income tax violated a federal statute designed to limit state taxation of a national business's net income because South Carolina compelled Heublein to engage in taxable business activity within the state that served no business purpose of Heublein. Instead of permitting distillers like Heublein to sell their wholesalers directly, South Carolina requires that the initial sale be made to a local agent, who then ships to the wholesalers from a state licensed warehouse. Ibid at 278. This requirement was sustained as "reasonably related" to the state's liquor control purposes. Ibid at 283.

The view of the Supremacy Clause advanced in the latest Jurisdictional Statement filed in Mississippi's case seems to conflict with this Court's most recent reconciliation of state liquor control with federal tax policy. According to the Statement (p. 16-17), because federal procurement policy allegedly favors unrestricted competition, any state's regulation of the liquor business that does not authorize unlicensed

---

[2] See Code of Laws of South Carolina, 1962, Chapter 16, sections 65-1281, 1285-86, and 1286.1 (1973 Cumulative Supplement).

competition in wholesale sales to federal retailers located within their respective borders violates the Supremacy Clause. However, there is nothing in the record made below or in any federal statute or regulation to suggest that the United States has any policy of avoiding state regulation or taxation of liquor procurement. On the contrary, the military regulation in question was amended, prior to the adoption by Mississippi of its own regulation, to delete a prior invitation to disregard state law in procuring liquor.[3]

The Jurisdictional Statement's assumption that, absent the regulation, the military retailers could "obtain their liquor" at lower prices than they paid (16) is supported only by the author's imagination. The Stipulation of Facts (51a-61a) does not show what prices were actually paid during the period of regulation or before. Nor does the Stipulation suggest that the military elected to buy direct from distillers to get a better price. Paragraph 12 simply notes this election without any explanation of its purpose (53a).

B. The tax was not imposed on the military retailers.

The Statement also makes an unwarranted claim that the Court below disregarded this Court's decision in *First Agricultural National Bank* v. *State Tax Commission,* 392 U. S. 339 (1968). The opinion below carefully considered that case and the entire line of federal immunity from state tax cases springing from *McCulloch* v. *Maryland,* 4 Wheat. 316, (10a-25a). The opinion correctly concluded that nothing said in this national bank case had impaired the validity of *Alabama* v. *King & Boozer,* 314 U.S. 1 (1941), which had laid to rest the notion that the

[3] See the change of June 9, 1966 (paragraph 8, 50a).

economic incidence of a state tax could determine its validity (16a-17a, 25a).

In the bank case this Court concluded first that national banks had a congressionally established immunity from all forms of state taxation except as to real property and bank shares. 392 U.S. 339, 346. The Court then declined to apply to the bank's purchases a Massachusetts sales tax that its legislature intended should be paid by purchasers. Ibid at 348.

This state tax immunity of National banks rests upon a legislative adoption and perpetuation of a decision that resulted from Maryland's use of a tax to pre-empt for itself the creation of currency, a natural and inevitable federal function. The federal immunity sought here is from taxation which has its roots in a police power to control the liquor traffic, traditionally exercised by the states. Since it took a constitutional amendment (the eighteenth) to supersede such state control it is highly doubtful that any mere legislative or administrative declaration of federal procurement policy could nullify a state's power to tax its wholesalers upon sales made to federal retailers within the state.

In any event, as the court below pointed out, Mississippi's intention was to tax the sellers rather than the purchasers and the bank case is therefore inapposite (24a). Its opinion was not rested on any belief "that no sanction would be imposed on any distiller for absorbing the mark-up," as the Statement mistakenly asserts (12). In its discussion of the intent of the Mississippi legislature the opinion merely noted that, unlike Mississippi's sales tax, its mark-up law did not mandate collection from the buyer. See 22a, footnote 10. The opinion had previously observed that the

distillers had been directed by the Tax Commission "to invoice and collect" the mark-up from the military retailers "on pain of criminal penalties and delistment" (20a).

In determining the legal incidence of the tax the court noted that it is the distiller-wholesaler who must "pay the tax *in advance* of its collection from his customer" (20a). Ultimate collection from the military retailers was thus assumed by the decision below, although legal liability for the tax was confined to their suppliers.

C. The tax was explicitly authorized by the Buck Act.

A curious aspect of the Jurisdictional Statement is its failure to notice the District Court's reliance upon the legislative history of the Buck Act (10a-11a, footnote 12) or this Court's decisions construing that Act (24a, footnote 20, 25a). One purpose of the remand was to determine whether the mark-up as applied to wholesale sales by distillers to military retailers was a tax within the meaning of that Act and if so whether its exempting provisions precluded collection of the tax. *United States* v. *Mississippi Tax Commission,* 412 U.S. 363, 379. The history and purpose of the Buck Act is spelled out in Senator George's Report for the Committee on Finance, not considered in this Court's prior opinion or referred to in the Jurisdictional Statement. We have therefore reproduced that Report in full as an Appendix to this motion.[4]

---

[4] The Report conclusively disposes of one claim on which the prior appeal was rested. It explicitly states as to sales made and delivered to a Federal area, that no exemption may be claimed because of "exclusive federal jurisdiction over the area." Discussion of Section 1a, p. 14, *infra.*

Of the three decisions of this Court dealing with the Act cited in the opinion below, only one, *Polar Ice Cream,* was cited to this Court upon the prior appeal. We have summarized all three in their order of decision.

In *Howard* v. *Commissioners,* 344 U.S. 624 (1952), the Court held that the Buck Act authorized collection of a Louisville, Kentucky, occupational tax measured by gross receipts from activities carried on for the exclusive benefit of the federal government on an enclave over which the United States had exclusive jurisdiction. Justices Black and Douglas dissented on the ground that the Buck Act did not grant federal consent to state taxation for the privilege of doing business with the United States. The majority answered that "The grant was given within the definition of the Buck Act and this was for any tax measured by net income, gross income, or gross receipts." 344 U.S. 624, 629.

Polar Ice Cream Co. v. *Andrews,* 375 U.S. 361 (1964), sustained a Florida wholesaler's tax included in the price of milk bought by post exchanges and measured by the volume sold to them. The court construed that tax, as Mississippi's mark-up was construed below, as a tax levied on wholesalers for the privilege of doing business in the state. Although the economic burden of the tax was borne by the military purchasers its collection from them by the wholesalers did not invalidate the tax. As to the Buck Act the Court said:

> "Besides, 4 U.S.C. § 105, enacted subsequent to James and Standard Oil, supra, confers upon the States jurisdiction to levy and collect a sales or use tax 'in any federal area,' and a sales or use

> tax is defined as 'any tax levied on, with respect to, or measured by sales . . . of tangible personal property . . . .' 4 USC § 110. We think this provision provides ample basis for Florida to levy a tax measured by the amount of milk Polar distributes monthly, including milk sold to the United States for use on federal enclaves in Florida." 375 U.S. 361, 383.

In *Sullivan* v. *United States,* 395 U.S. 169 (1969), the Court held that Section 514 of the Soldiers and Sailors Civil Relief Act (50 USC App. 24), exempting servicemen from state taxation in respect of personal property, did not relieve them from sales or use taxes in states where they purchased personal property from private sellers. The Court based its ruling on the fact that the relief Act, passed in 1942, says nothing about sales or use taxes, which had been explicitly dealt with in the 1940 Buck Act. The Court construed the Buck Act's federal instrumentality exemption as follows:

> "In the 1940 Buck Act, Congress provided that the States have 'full jurisdiction and power to levy and collect' sales and use taxes in 'any Federal area,' except with respect to the sale or use of property *sold by* the United States or its instrumentalities through commissaries, ship's stores, and the like."[32] 395 U.S. 169, 178. (Emphasis added).

Footnote 32 quotes in full the exempting provisions, 107(a) and (b), and this Court apparently regarded this exemption of federal instrumentalities as inapplicable to sales of merchandise *to* federal retailers. This is indeed the way the current Navy Exchange Manual regards it (22a-23a, footnote 19). The Jurisdictional Statement treats sales of liquor to military clubs for resale as if those sales had an immunity from

state taxation not accorded to sales made to post exchanges for resale of "food, clothing, toilet articles, and other personal items" (395 U.S. 169, footnote 33). A more myopic view of a state's power to tax its suppliers of liquor is difficult to imagine.

CONCLUSION

Finally, the Statement's suggestion that other states "might follow Mississippi's lead in attempting to regulate and tax the purchase of liquor by federal instrumentalities for sale in federal enclaves or on military bases" wrongly implies that Mississippi was the first state to tax wholesale sales to military retailers. Exhibit 9 of the Stipulation of Facts (51a) shows that larger wholesale mark-ups than Mississippi's had been previously collected by Washington, Oregon, and Michigan.[5] California, for a license state example, collects its wholesalers' excise tax on liquor sales by "out-of-state" distillers to federal agencies in California (*National Distillers* v. *State Board*, 83 Calif. App. 2d 35, 187 Pac. 2d 821 (1947)), whether the purchasers are located on Federal enclaves or not. See California Revenue and Taxation Code, Sec. 32201 and 34a, footnote 24. The Statement thus attempts to give the case an aura of importance that its facts deny. Moreover, as we have shown, the Statement attacks the merits of the decision below by assuming that the opinion held what it does not hold.

Military retailers of liquor in Mississippi already possess, by virtue of the regulation under attack, two distinct advantages over all other liquor retailers in

[5] The exhibits referred to in Paragraph 9 of the Stipulation (51d) were all omitted from the Appendix to the Jurisdictional Statement, although this paragraph is meaningless without the exhibits.

the State. The military retailers do not have to collect or pay the 5% sales tax imposed on Mississippi consumers nor do they pay the substantial gallonage taxes imposed on private retailers for the privilege of selling liquor (34a). The sole economic purpose of this appeal is to obtain for military retailers of liquor an additional advantage that no other retailers enjoy, whether military or civilian, i.e., a wholesale price that does not include either a reasonable mark-up needed to cover wholesaling services or a state tax imposed on a wholesaler for the privilege of selling to retailers in the state.

We respectfully submit that this appeal should be dismissed or that the judgment below should be summarily affirmed.

Respectfully submitted,

A. F. SUMMER
Attorney General

GUY N. ROGERS
Assistant Attorney General
State of Mississippi

ROBERT L. WRIGHT
Washington, D. C.
Special Counsel to the
State Tax Commission

APPENDIX

76TH CONGRESS, 3D SESSION

SENATE

REPORT NO. 1625

APPLICATION OF STATE SALES, USE, AND INCOME TAXES TO TRANSACTIONS IN FEDERAL AREAS

MAY 16 (legislative day, APRIL 24), 1940.—
Ordered to be printed

MR. GEORGE, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 6687]

The Committee on Finance, to whom was referred the Bill (H.R. 6687) to authorize the levy of State, Territory, and District of Columbia taxes upon, with respect to, or measured by sales, purchases, or use of tangible personal property or upon sellers, purchasers, or users of such property measured by sales, purchases, or use thereof occurring in United States national parks, military and other reservations or sites over which the United States Government may have jurisdiction, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

GENERAL STATEMENT

This bill passed the House at the first session of the Seventy-sixth Congress and was referred to the Committee on Finance which reported it to the Senate with certain clarifying changes on July 28, 1939. Due to certain objec-

tions being raised to the bill by various departments in the executive branch of the Government after the bill had been reported to the Senate, it was recommitted to the Committee on Finance for further study and recommendation. Your committee, through a subcommittee composed of Senators George, Brown, and La Follette, held a hearing on April 23, 1940, at which time representatives of the various State taxing authorities appeared in favor of the bill and representatives of the War and Navy Departments and of the Department of the Interior appeared in opposition to certain features of the bill.

Upon completion of the hearings, the subcommittee suggested that a conference be held by the representatives of the State agencies and the Federal agencies with a view to recommending to said subcommittee any proposal or proposals upon which said representatives could agree. Such a conference was held and the proposals which were submitted were used as a point of departure by the subcommittee in drafting the amendment reported by your committee.

In general, the bill, as amended, proposes to do three things. First, it provides that State sales and use taxes (with certain exceptions which are hereafter explained) shall be applicable with respect to transactions occurring within Federal areas in the same manner and to the same extent as they are applicable with respect to transactions occurring outside such areas and within the State. Second, it provides that State income taxes shall be applicable with respect to persons residing within a Federal area or receiving income from transactions occurring or services performed in such area in the same manner and to the same extent as they are applicable with respect to persons residing outside such area or receiving income from transactions occurring or services performed outside such area. Third, it contains certain clarifying amendments to section 10 of the Federal Highway Act of June 16, 1936 (known as the Hayden-Cartwright Act permitting State

taxation of sales of gasoline and other motor-vehicle fuels sold in Federal areas for private purposes), and provides that the tax levied and collected under that section shall continue to be levied and collected under that section, as amended, rather than under the authority contained in section 1 of this bill.

Detailed Explanation of the Bill

Section 1(a) of the committee amendment removes the exemption from sales or use taxes levied by a State, or any duly constituted taxing authority in a State, where the exemption is based solely on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a Federal area. At the present time exemption from such taxes is claimed on the ground that the Federal Government has exclusive jurisdiction over such areas. Such an exemption may be claimed in the following types of cases: First, where the seller's place of business is within the Federal area and a transaction occurs there, and, second, where the seller's place of business is outside the Federal area but delivery is made in Federal area and payment received there. This section will remove the right to claim an exemption because of the exclusive Federal jurisdiction over the area in both of these situations. The section will not affect any right to claim any exemption from such taxes on any ground other than that the Federal Government has exclusive jurisdiction over the area where the transaction occurred.

This section also contains a provision granting the State or taxing authority full jurisdiction and power to levy and collect any such sale or use tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area. This additional authorization was deemed to be necessary so as to make it clear that the State or taxing authority had power to levy or collect any such tax in any Federal area within the State by the ordinary methods employed outside such

areas, such as by judgment and execution thereof against any property of the judgment-debtor.

Subsection (b) of section 1 provides that the taxes to be levied and collected under this section shall be applicable only with respect to sales or purchases made, receipts from sales received, or storage or use occurring, after June 30, 1940.[6]

Section 2(a) of the committee amendment removes the exemption from income taxes levied by a State, or any duly constituted taxing authority in a State, where the exemption is based solely on the ground that the taxpayer resides within a Federal area or receives his income from transactions occurring or services performed in such area. One of the reasons for removing the above exemption is because of an inequity which has arisen under the Public Salary Tax Act of 1939. Under that act a State is permitted to tax the compensation of officers and employees of the United States when such officers and employees reside or are domiciled in that State but is not permitted to tax the compensation of such officers and employees who reside within Federal areas within such State. For example, a naval officer who is ordered to the Naval Academy for duty and is fortunate enough to have quarters assigned to him within the Naval Academy grounds is exempt from the Maryland income tax because the Naval Academy grounds are a Federal area over which the United States has exclusive jurisdiction; but his less fortunate colleague, who is also ordered there for duty and rents a house outside the academy grounds because no quarters are available inside, must pay the Maryland income tax on his Federal salary. Another reason for removing the above exemption, is that under the doctrine laid down in *James V. Dravo Contracting Co.* (302 U.S. 134, 1937), a State may tax the income or receipts from transactions occurring or serv-

[6] The Bill was not passed until October 9, 1940 and the effective date was changed accordingly to December 31, 1940, 54 Stat. 1060.

ices performed in an area within the State over which the United States and the State exercise concurrent jurisdiction but may not tax such income or receipts if the transactions occurred or the services were performed in an area within the State over which the United States has exclusive jurisdiction.

This section contains, for the same reasons, a similar provision to the one contained in section 1 granting the State or taxing authority full jurisdiction and power to levy and collect any such income tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

Subsection (b) of section 2 provides that the taxes to be levied and collected under this section shall be applicable only with respect to income or receipts received after June 30, 1940. Your committee, upon recommendation of the representatives of the State taxing authorities, has made the effective dates of both section 1 and section 2 the same for ease in administration and to prevent the income tax section from becoming effective retroactively. The definition of income tax is broad enough to include a sales tax which is measured by gross receipts from sales. To fix an earlier effective date for the income tax section than for the sales tax section would thus result in having different effective dates for the same tax, in some cases, and would also permit the retroactive application of such sales taxes.

Section 3 of the committee amendment provides that sections 1 and 2 shall not be deemed to authorize the levy or collection of any tax on or from the United States or any instrumentality thereof. This section also provides that sections 1 and 2 shall not be deemed to authorize the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property sold by the United States or any instrumentality thereof to any authorized purchaser. An authorized purchaser being a person who is permitted, under regulations of the Secretary

of War or Navy, to make purchases from commissaries, ship's stores, or voluntary unincorporated organizations of Army or Navy personnel, such as post exchanges, but such person is deemed to be an authorized purchaser only with respect to such purchases and is not deemed to be an authorized purchaser within the meaning of this section when he makes purchases from organizations other than those heretofore mentioned.

For example, tangible personal property purchased from a commissary or ship's store by an Army or naval officer or other person so permitted to make purchases from such commissary or ship's store, is exempt from the State sales or use tax since the commissary or ship's store is an instrumentality of the United States and the purchaser is an authorized purchaser. If voluntary unincorporated organizations of Army and Navy personnel, such as post exchanges, are held by the courts to be instrumentalities of the United States, the same rule will apply to similar purchases from such organizations; but if they are held not to be such instrumentalities, property so purchased from them will be subject to the State sales or use tax in the same manner and to the same extent as if such purchase was made outside a Federal area. It may also be noted at this point that if a post exchange is not such an instrumentality, it will also be subject to the State income taxes by virtue of section 2 of the committee amendment.

Section 4 of the committee amendment was inserted to make certain that the criminal jurisdiction of Federal courts with respect to Federal areas over which the United States exercised exclusive jurisdiction would not be affected by permitting the States to levy and collect sales, use, and income taxes within such areas. The provisions of this section are applicable to all Federal areas over which the United States exercises jurisdiction, including such areas as may be acquired after the date of enactment of this act.

Section 5 of the committee amendment provides that section 1 and 2 shall not be deemed to authorize the levy

or collection of any tax on or from any Indian not otherwise taxed.

Section 6 contains the definitions of the terms used in the committee amendment.

Subsection (a) defines the term "person" as it is defined in section 3797 of the Internal Revenue Code to mean and include an individual, trust, estate, partnership, company, or corporation.

Subsection (b) defines the term "sales or use tax" but excepts from such definition a tax with respect to which the provisions of section 10 of the Federal Highway Act of June 16, 1936, are applicable. Section 10 of that act, commonly known as the Hayden-Cartwright Act, permits State taxation of sales of gasoline and other motor-vehicle fuels sold in Federal areas for private purposes. Your committee thought it desirable that the provisions of that act should be continued in effect without regard to the provisions of section 1 of the committee amendment and therefore any State tax which is imposed on sales of gasoline and other motor-vehicle fuels will continue to be imposed on such sales in Federal areas under the provisions of section 10 of that act, as amended by section 7 of the committee amendment, rather than under the provisions of section 1 of the committee amendment.

Subsection (c) defines the term "income tax" to mean any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts. This definition, as well as the preceding definition of sales or use tax must of necessity cover a broad field because of the great variations to be found between the different State laws. The intent of your committee in laying down such a broad definition was to include therein any State tax (whether known as a corporate-franchise tax, or business-privilege tax, or by any other name) if it is levied on, with respect to, or measured by, net income, gross income, or gross receipts.

Subsection (d) defines the term "State" to include any Territory or possession of the United States. The District of Columbia was not included in the definition since Congress is the local legislature for the District and any Sales, use or income taxes enacted for the District are applicable in all areas within said District.

Subsection (e) defines the term "Federal area" to mean any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency of the United States. Any Federal area, or any part thereof, which is located within the exterior boundaries of any State is deemed to be a Federal area within such State for the purposes of this act. For example, Yellowstone National Park is a Federal area which is located within the exterior boundaries of three States (Wyoming, Montana, and Idaho) and therefore, for the purposes of this act, that part of the Park which falls within the exterior boundaries of Wyoming will be included within Wyoming's taxing jurisdiction, that part which falls within Montana will be included within Montana's taxing jurisdiction, and that part which falls within Idaho will be included within Idaho's taxing jurisdiction.

Section 7 (a) of the committee amendment amends section 10 of the Hayden-Cartwright Act so that the authority granted to the States by such section 10 will more nearly conform to the authority granted to them under section 1 of this act. At the present time a State such as Illinois, which has a so-called gallonage tax on gasoline based upon the privilege of using the highways in that State, is prevented from levying such tax under the Hayden-Cartwright Act because it is not a tax upon the "sale" of gasoline. The amendments recommended by your committee will correct this obvious inequity and will permit the levying of any such tax which is levied "upon with respect to, or measured by, sales, purchases, storage, or use of gasoline or other motor vehicle fuels."

Subsection (b) of section 7 is a clarifying amendment to such section 10 restating what was the obvious intent of the original act.

Your committee has also amended the title of the bill to conform to the changes made in the text.